

PART 17

SPECIAL CONTRACTING METHODS

17.104 Related areas.

17.104-1 Set-asides.

FAR as of FAC 90-25

(a) Total small business ~~or labor surplus area~~ set-asides and multiyear contracting are compatible and may be used together.

(b) Partial set-asides for small business ~~or labor surplus area~~ concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors. However—

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(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time. ~~(Partial labor surplus area set-asides are only authorized for DOD activities at this time.)~~

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FAR as revised

(a) Total small business set-asides and multiyear contracting are compatible and may be used together.

(b) Partial set-asides for small business concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors.

However—

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(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time. [FAC 90-32]

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17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) below, the contracting officer may include options in contracts when it is in the Government's interest. (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

- (1) The foreseeable requirements involve—
 - (i) Minimum economic quantities (i.e.,

(a) Subject to the limitations of paragraphs (b) and (c) of this section, **for both sealed bidding and contracting by negotiation**, the contracting officer may include options in contracts when it is in the Government's interest. **When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at 52.217-5, Evaluation of Options, in the solicitation.** (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

- (1) The foreseeable requirements involve—
 - (i) Minimum economic quantities (i.e.,

quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery; or

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options. [FAC 90-31]

17.208 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) below.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, ~~a determination has been made~~ that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

- (1) The solicitation contains an option clause;
- (2) An option is not to be exercised at the time of contract award;
- (3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and
- (4) ~~A determination has been made~~ that there is a reasonable likelihood that the option will be exercised.

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) below.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, **the contracting officer has determined** that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

- (1) The solicitation contains an option clause;
- (2) An option is not to be exercised at the time of contract award;
- (3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and
- (4) **The contracting officer has determined** that there is a reasonable likelihood that the option will be exercised. **For sealed bids, the determination shall be in writing.** [FAC 90-31]

17.500 Scope of subpart.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). Policies and procedures for acquisitions from required sources of supplies are prescribed in Part 8.</p>	<p>(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.</p> <p>(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include acquisitions from required sources of supplies prescribed in Part 8, which have separate statutory authority. [FAC 90-33]</p>

17.502 General.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>—Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's interest to do so. {See 17.503(a)(1) right side below}</p> <p>{From 17.503(a)(2)}: The action does not conflict with any other agency's authority or responsibility; e.g., that of the Administrator of General Services under the Federal Property and Administrative Services Act (see 40 U.S.C. 481, 486, and 41 CFR 101-25.2).]</p>	<p>(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.</p> <p>(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.</p> <p>(c) Acquisitions under the Economy Act are not exempt from the requirements of Subpart 7.3, Contractor Versus Government Performance. {See 17.503(b) left side below}</p> <p>(d) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act). [FAC 90-33]</p>

17.503 Determinations and findings requirements. [FAC 90-33, CASE 94-710]

~~17.503 Determination requirements.~~

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>—(a) The determination prescribed in 17.502 shall include a finding that—</p> <p>—(1) Legal authority for the acquisition otherwise exists; and</p> <p>(2) [see 17.502]</p> <p>—(b) If the acquisition involves the use of a commercial or industrial activity operated by the servicing agency, the determination shall also include a finding that the acquisition conforms to the requirements of Subpart 7.3, Contractor Versus Government Performance.</p> <p>{ See 17.502(c) above right }</p>	<p>(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—</p> <p>(1) Use of an interagency acquisition is in the best interest of the Government, and</p> <p>(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.</p> <p>(b) If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable—</p> <p>(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;</p> <p>(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or</p> <p>(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.</p> <p>(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.</p>

17.504 Ordering procedures.

FAR as of FAC 90-25

(a) ~~When placing an order for supplies or services from another Government agency, the contracting officer shall first obtain the determination required in 17.502.~~

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(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures apply:

(1) If a justification and approval or a ~~determination and findings (D&F)~~ is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and the D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing special contract terms ~~or other requirements that must~~ comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action and (ii) complying fully with the competition requirements of Part 6 (see 6.002).

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FAR as revised

(a) **Before** placing an **Economy Act** order for supplies or services **with** another Government agency, **the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.**

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(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F **(other than the requesting agency's D&F required in 17.503)** is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing **information or** special contract terms **needed to** comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the competition requirements of Part 6 (see 6.002).

However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by Part 31), and that adequate contract administration will be provided.

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[FAC 90-33]

17.505 Payment.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Under the Economy Act— —(1) The servicing agency may request the requesting agency, in writing, for advance payment by check for all or part of the estimated cost of furnishing the supplies or services; or</p> <p>—(2) If approved by the servicing agency, payment by check for actual costs may be made by the requesting agency after the supplies or services have been furnished.</p> <p>—(b) If advance payment is made, adjustments on the basis of actual costs shall be made as agreed by the agencies.</p> <p>(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.</p>	<p>(a) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.</p> <p>(b) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.</p> <p>(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.</p> <p>(d) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled. [FAC 90-33]</p>